

NEIFELD DOCKET NO: OCLP-3-LAOR-US

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF: Raviv LAOR

USPTO CONFIRMATION CODE:3948

APPLICATION NO: 09/595,677

FILED:6/19/2000

EXAMINER: James W. Myhre

GROUP ART UNIT:3622

FOR: Method of and System for Managing Promotions for Purchase Transactions Over a  
Network

37 CFR 41.37 APPEAL BRIEF

ASSISTANT COMMISSIONER FOR PATENTS

ALEXANDRIA, VA 22313

Sir:

In response to the final office action mailed June 16, 2006, the applicant submits this  
appeal brief.

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I. **37 CFR 41.37 (a)(1) and (2)**

The applicant submitted a Notice of Appeal and fee therefore on September 14, 2006.

II. **37 CFR 41.37 (b)**

The applicant submits the fee for the appeal brief herewith, via EFS web credit card payment.

III. **37 CFR 41.37 (c)(1)(i) Real Party in Interest**

The real party in interest is Catalina Marketing Corporation, a Delaware corporation.

IV **37 CFR 41.37 (c)(1)(ii) Related Appeals and Interferences**

There are no related appeals or interferences.

V. **37 CFR 41.37 (c)(1)(iii) Status of Claims**

Claims 1-3, 11, and 28-31 are pending. Claims 4-10 and 12-27 are cancelled. Claims 1-3, 11, and 28-31 are being appealed.

VI. **37 CFR 41.37 (c)(1)(iv) Status of Amendments**

There are no outstanding amendments.

VII. **37 CFR 41.37 (c)(1)(v) Summary of the Claimed Subject Matter**

All citations are from the Amendment by Replacement Section filed March 22, 2006.

Claim 1 defines a system for managing promotions over a network comprising (page 1 lines 5-8; figure 101): a promotion server system including a computer processor and associated datastore, said datastore containing data representative of terms and statistics of one or more item promotions and electronic tokens (page 3 lines 16-20, page 2 lines 6-9; figure 101: 1120); a

commercial server system including a computer processor and associated commercial datastore, said commercial datastore containing data representative of terms and statistics of one or more item promotions and electronic tokens, said commercial server system being selectively coupleable to said promotion server system over said network (page 3 lines 16-20, page 2 lines 6-9; figure 101: 1120, 1130); and a client server system including a computer processor and associated client datastore, said client datastore containing data representative of terms and statistics of one or more item promotions and electronic tokens, said client server system being selectively coupleable over said network to (1) said promotion server system and to (2) said commercial server system (page 6 lines 9-13; figure 101: 1110, 1120, 1130); wherein said commercial server system further includes a script for generating a website frame having a predetermined signature, such that an electronic token uniquely corresponds to said predetermined signature (page 7 lines 12-15); wherein said commercial server system distributes said website frame over said network to said promotion server system (page 22 lines 19-22); wherein said client server system connects to said promotion server system over said network (page 22 lines 22-24; figure 101: 1160); wherein said promotion server system transmits said electronic token from said website frame over said network to said client server system (page 22 lines 22-24; figure 101: 1160); and wherein said promotion server system transmits over said network to said commercial server system coupon information associated with the client received from said electronic token (page 22 lines 24-26; figure 101: 1160).

Claim 28 defines a system for managing promotions over a network comprising (page 1 lines 5-8; figure 101): an promotion server (page 3 lines 16-17; figure 101: 1120); a retailer's commercial server (page 3 lines 19-20; figure 101: 1130); a consumer's client computer (page 6 lines 11-13; figure 101: 1110); wherein said advertiser's promotion server; said retailer's commercial server; and said consumer's client computer are operably connected to the Internet, and are structured and programed so that (page 19 lines 15-17; figure 101: 1160): said consumer's client computer can request from said retailer's commercial server a promotion (page 6 lines 13-15; figure 102: 1214); and said retailer's commercial server responds to requests from said consumer's client computer for said promotion by automatically obtaining from said promotion server promotion authorization data for said promotion, and said retailer's commercial

server determines from said authorization data whether to accept or decline said promotion (page 3 lines 22-26; figure 102: 1216, figure 104, figure 105).

Claim 30 defines a computer network implemented method for managing promotions over a network comprising (page 1 lines 5-8, page 2 lines 6-9; figure 101): providing an promotion server (page 3 lines 16-17; figure 101: 1120); providing a retailer's commercial server (page 3 lines 19-20; figure 101: 1130); providing a consumer's client computer (page 6 lines 11-13; figure 101: 1110); wherein said advertiser's promotion server; said retailer's commercial server; and said consumer's client computer are operably connected to the Internet, and are structured and programed so that (page 19 lines 15-17; figure 101: 1160): said consumer's client computer can request from said retailer's commercial server a promotion (page 6 lines 13-15; figure 102: 1214); and said retailer's commercial server responds to requests from said consumer's client computer for said promotion by automatically obtaining from said promotion server promotion authorization data for said promotion, and said retailer's commercial server determines from said authorization data whether to accept or decline said promotion (page 3 lines 22-26; figure 102: 1216, figure 104, figure 105).

#### **VIII. 37 CFR 41.37 (c)(1)(vi) Grounds of Rejection to be Reviewed on Appeal**

Whether the examiner's rejection of all claims under 35 USC 132(a) as being based upon new matter, styled as an objection to the specification, should be reversed.

Whether the rejections of claims 1-3, 11, and 28-31 under 35 USC 102(b) as being anticipated by Gerace (USP 5,848,396, hereinafter "Gerace") should be reversed.

#### **IX. 37 CFR 41.37 (c)(1)(vii) Argument**

#### **X. The Examiner's Rejections under 35 USC 132(a) Should be Reversed**

The examiner objected to matter added by an amendment filed March 22, 2006 under 35 USC 132(a). However, a 132 objection is procedurally improper since the examiner asserts that the claims are only supported by the new matter. In such cases, precedent requires the examiner to impose 112 rejections:

The proper basis for rejection of a claim amended to recite elements thought to be without support in the original disclosure, therefore, is §112, first paragraph, not §132. The latter section prohibits addition of new matter to the original disclosure. It is properly employed as a basis for objection to amendments to the abstract, specifications, or drawings attempting to add new disclosure to that originally presented. Past opinions of this court, in cases in which a §132 claim rejection was reviewed on a §112 analysis, should not in future be viewed as having approved the employment of §132 as a basis for claim rejection. The amended claims involved in those cases should have been rejected under §112, first paragraph. The claim rejections in those cases could then have been explicitly affirmed or reversed on direct applications of §112, rather than on §112 analyses applied to §132 rejections.<sup>6</sup> Accordingly, such cases are overruled insofar as they approved rejection of claims under §132.

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<sup>6</sup> Similarly, rejections of claims for lack of support when required in reissue applications should be made under §112, first paragraph, rather than under the new matter prohibition of 35 USC 251. [*In re Rasmussen*, 650 F.2d 1212, 1214, 211 USPQ 323, 326 (CCPA 1981).]

In alleging that the new matter is not supported by the original disclosure, the examiner stated that:

The amendment filed March 22, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is

as follows:

The examiner is unclear as to whether the applicant's representative has admitted that new matter has been added. Page 16, Section III. REMARKS, line 8 of the amendment filed on March 22, 2006 contains the sentence "Now new matter has been added". While this may be a typographical error, the examiner asserts that the original specification incorporated by reference only the portion of U.S. Patent No. 6,041,309 related to the commercial server system using the promotion server system to process the redemption of the promotion and did not incorporate by reference U.S. Patent No. 6,041,309 in its entirety (Specification submitted 6/19/2000, Page 6, lines 7-13). The applicant added a significant amount of matter to the specification (11 pages were added to a 14 page specification), much of which is considered new matter since it is not specific to the promotion server system processing the redemption. For example:

- a. All new embodiments incorporating the use of "cookies", such as Page 19, lines 9-22 of the Specification submitted on 3/12/2006, are considered new matter.
- b. Drawings 103; 104 and 105 have incorporated a clearing house which is not mentioned in the original specification

Applicant is required to cancel all new matter in the reply to this Office Action.

[Office action mailed June 16, 2006 page 2 line 11 through page 3 line 11.]

In response, the applicant's statement that "Now new matter has been added" included a typographical error, of "Now" instead of "No". The correct statement should have been "No new matter has been added". The typographical error can be found in the amendment filed March 22, 2006 at page 16 line 8.

Moreover, the appellant points out that the incorporation in the original specification complies with 35 USC 1.57. That incorporation at page 6 lines 6-15 reads as follows:

The commercial server system can either report this information to the

promotion server system, or the commercial server system can use the promotion server system to process the redemption of the promotions, as described in commonly assigned U.S. Patent 6,041,309 entitled METHOD OF AND SYSTEM FOR DISTRIBUTING AND REDEEMING ELECTRONIC COUPONS and commonly assigned copending patent application Serial No. \_\_\_\_\_, entitled METHOD OF AND SYSTEM FOR DISTRIBUTING AND REDEEMING ELECTRONIC COUPONS, both incorporated herein by reference.

Therefore, the incorporation by reference was proper and presumptively of the entire document.

Moreover, that incorporation satisfies the legal requirements for incorporation by reference of an entire document. Whether and to what extent material has been incorporated by reference into a host document is a question of law. See Quaker City Gear Works, Inc. v. Skil Corp., 747 F.2d 1446, 1453-54, 223 USPQ 1161, 1166 (Fed. Cir. 1984). This incorporation by reference doctrine specifically applies to an incorporation by reference in a patent application. Advanced Display Systems Inc. v. Kent State University, 212 F.3d 1272, 1281-82, 54 USPQ2d 1673, 1678-80 (Fed. Cir. 2000). What incorporation by reference requires are a citation to a document that is uniquely identifiable by the citation and an indication that it is incorporated by reference. In this specification, the grammatical construction of the incorporation statement indicates that it is an incorporation of the entire document. The incorporation passage quoted above identifies specific subject matter (aspects of the commercial server system) disclosed in 6,041,309, but it does not state that only that specific subject matter is incorporated by reference. If that was the intent, it would have stated to the effect that "and these aspects of the commercial server system of the following references are incorporated by reference." Instead, the incorporation statement identified specific subject matter of U.S. Patent 6,041,309, and then stated that U.S. Patent 6,041,309 was incorporated by reference, thereby indicating that the incorporation was not limited to the specific subject matter. Accordingly, it is clear from grammar and context to anyone reading the foregoing passage that the drafter intended all of U.S. Patent 6,041,309 to be incorporated by reference - as opposed to an incorporation of some



limited portion of U.S. Patent 6,041,309.

Accordingly, there is no basis to conclude that what was incorporated was only a portion of the uniquely identified document. For this additional reason, the examiner's 132 argument is improper. Therefore, the rejections of all claims, styled as an objection to the specification upon 35 USC 132, should be reversed.

Finally, the examiner has not expressly shown that the incorporations are essential to support any claim. Thus, to the extent that the panel believes the incorporation was only partial, and to the extent the panel treats this issue as a rejection, there is no basis for the panel to affirm.

**XI. The Examiner's Rejections of Claims 1-3, 11, and 28-31 under 35 USC 102(b) as Being Anticipated by Gerace USP 5,848,396 are Improper and Should be Reversed**

**A. Overview**

The examiner rejected claims 1-3, 11, and 28-31 under 35 USC 102(e) as being anticipated by Gerace.

In brief summary, the examiner is incorrect at least because Gerace is not directed to *security* of promotions, does not disclose a three computer system including consumer's client computer that requests redemptions from a retailer's computer system wherein the retailer computer system *responds* to that request by requesting informatoin from a back-end computer system relevant to whether to grant the consumer a promotion, *frames having unique identifications*, or *transfer of accounting statistical information*.

Figure 101 discloses such a three-party system, wherein client system 1110 can request redemption of an electronic coupon by server system B 1130, which is the commercial server system. Prior to redeeming the electronic coupon presented by the customer, the commercial server system, server system B 1130, authenticates that the consumer is entitled to the benefit of the electronic coupon by obtaining information from server C 1140.

This three-party system is summarized in the replacement specification at page 3 lines 16-23, which states that:

A system for managing promotions over a network according to one

embodiment of the invention includes a promotion server system having a computer processor and associated datastore, the datastore containing data representative of terms and statistics of one or more item promotions and a commercial server system including a computer processor, the commercial server system being selectively coupleable to the promotion server system over the network. The promotion server system includes promotion code for transferring, to the commercial server system, the data representative of the terms and statistics of the promotions. The promotion server system may further include authorization code for enabling the commercial server system to accept or decline one or more of the promotions and/or accounting code for providing to the commercial server system data representative of one or more of the number of promotions redeemed and the value of the redeemed promotions.

This passage discloses a promotion server system (server A 1120) and commercial server system (server B 1130), whereby the promotion server system may further include authorization code for enabling the commercial server system to accept or decline one or more of the promotions. This defines an authentication process. This authentication process is described in more detail in the replacement specification at page 21 line 16 through page 22 line 11, which states that:

In another embodiment of the invention, Cookies are transferred to, or retrieved from, a client system by a frame spawned within a primary website by JavaScript or other similar software code. This embodiment is compatible with security features included with some web browsers that limit a website to depositing and retrieving Cookies only for itself. For example, a user visiting a highly trafficked website generally receives a Cookie from that site, but a user cannot receive a cookie from a site on behalf of another site. This is because a Cookie deposited by a particular website is encoded with a signature corresponding to that website, and the browser utilizes that signature to limit

Cookie transfers to only the website that created the Cookie. However, a frame spawned within the highly trafficked website can deposit a Cookie on the Client system, and a similar frame spawned within another website can subsequently read that Cookie, as long as the frames spawned on different websites look the same (i.e., have the same signature) to the browser running on the Client system. As with the other embodiments described herein, the Cookie may contain all of the necessary the coupon information, including the complete coupon data structure necessary for benefits identification, validation and authentication, or the Cookie may contain only data identifying the Client, so that the Cookie functions as a pointer to a database on a coupon clearinghouse server. If the Cookie contains the complete data structure, the script will include the code necessary to authenticate and validate the coupon. The utility of this embodiment lies in the fact that the issuer and the redeemer of the coupon need not be the same entity. For example, a producer of goods may desire to have coupons distributed to potential purchasers, but may not desire to conduct the electronic commerce necessary to redeem the coupons. In this case, the producer of goods would distribute the JavaScript (or other similar script) for generating coupon-distributing website frames to highly trafficked websites. The producer of goods would also provide the frame-generating script to point-of-sale product retailers so that the coupons could be redeemed where the product is sold.

In contrast, Gerace is directed to determining the behavioral profile of a computer user. Title. Gerace discloses doing that with a software program (program 31 discussed at column 3 lines 57-62) resident on the server to which the computer user's client computer connects, which monitors the user's Internet browsing. Abstract. Gerace discloses a computer user's computer, a server computer, and computers to which the computer user's computer sends and receives data via the server computer.

**B. Independent Claims 28 and 30**

Consider now independent claim 28. It is directed to managing, including specifically, authorizing and accepting or rejecting requests for promotions received from a user of a computer, in response to such requests being received at the retailer's commercial server. It reads:

28. A system for managing promotions over a network comprising:

an promotion server;

a retailer's commercial server;

a consumer's client computer;

wherein said advertiser's promotion server; said retailer's commercial server; and said consumer's client computer are operably connected to the Internet, and are structured and programed so that:

said consumer's client computer can request from said retailer's commercial server a promotion; and

said retailer's commercial server responds to requests from said consumer's client computer for said promotion by automatically obtaining from said promotion server promotion authorization data for said promotion, and said retailer's commercial server determines from said authorization data whether to accept or decline said promotion.

Conceptually, Gerace and claim 28 differ in fundamental aspects. Claim 28 is directed to providing promotions, which impose financial obligations on a sponsor, whereas Gerace is directed to mere advertising, which imposes no financial obligations. As a result, the processes defined by claim 28 and disclosed by Gerace are fundamentally different.

Gerace is does not disclose or suggest acting in response to a user's request to a retailer commercial server for a promotion by having the retailer's commercial server obtaining from a promotion server promotion authorization data, and having the retailer's commercial server determining from that data whether to accept or decline a request from a user's computer for a promotion, as defined by claim 28.

Regarding the foregoing steps relating to authorization data to provide a consumer a promotion, the examiner argues as follows:

The Gerace invention checks to see if a viewing opportunity is adequate. If the viewing opportunity meets the advertisers display requirement, the commercial server accepts (inserts) or declines the advertisement to the consumer

citing Gerace Col 3, lines 39-67; Col 5, lines 8 - 40; and Col 11, line 57 through Col 12, line 56. What the examiner is referring to is that Gerace's program 31 compares a commercial advertiser's advertising display criteria, previously received by program 31, to a user's psychographic profile to see if the user's profile meets the criteria. If so, Geraces program 31 displays an commercial advertiser;s advertisement along with the web page the user initially requested.

In Gerace, the user never requests the specific advertisement be transmitted and displayed to the user. Hence, Gerace discloses nothing triggered in response to such a request.

In contrast, claim 28 defines "said retailer's commercial server responds to requests from said consumer's client computer for said promotion" by performing certain actions. Moreover, in response to the request from the consumer's client computer, claim 28 defines "automatically obtaining from said promotion server promotion authorization data for said promotion" and "determin[ing]... from said authorization data whether to accept or decline said [request for said] promotion." Interpolation supplied.

Gerace does not disclose actions triggered by request for promotions from users. Moreover, Gerace's program 31 has preexisting instructions from advertisers at the time a user is online browsing the internet.

In contrast, claim 28 defines obtaining server promotion authorization data in response to receipt by the commercial server of a user's request for a promotion.

For at least the foregoing reasons, Gerace does not anticipate claim 28.

Claim 30 is an analog of claim 28 and is not anticipated for the same reasons applicable to claim 28.

**C. Claim 1**

Claim 1 reads as follows:

1. *A system for managing promotions over a network comprising:*

a promotion server system including a computer processor and associated datastore, said datastore containing data representative of terms and statistics of one or more item promotions and electronic tokens;

a commercial server system including a computer processor and associated commercial datastore, said commercial datastore containing data representative of terms and statistics of one or more item promotions and electronic tokens, said commercial server system being selectively coupleable to said promotion server system over said network; and

a client server system including a computer processor and associated client datastore, said client datastore containing data representative of terms and statistics of one or more item promotions and electronic tokens, said client server system being selectively coupleable over said network to (1) said promotion server system and to (2) said commercial server system;

*wherein said commercial server system further includes a script for generating a website frame having a predetermined signature, such that an electronic token uniquely corresponds to said predetermined signature;*

wherein said commercial server system distributes said website frame over said network to said promotion server system;

wherein said client server system connects to said promotion server system over said network;

wherein said promotion server system transmits said electronic token from said website frame over said network to said client server system; and

wherein said promotion server system transmits over said network to said commercial server system coupon information associated with the client received from said electronic token.

This application discloses that a token is an identification of or point to an electronic coupon. That is the token is associated with a full description of an electronic coupon.

Gerace does not define "A system for managing promotions," as recited in claim 1.

Gerace is directed to presenting targeted advertising, not coupons or coupon redemption. It does not define associating a file or a datum (a token) with a full description of an electronic coupon.

Gerace also does not disclose claim 1's "a script for generating a website frame having a predetermined signature, such that an electronic token uniquely corresponds to said predetermined signature", as recited in claim 1. In Gerace, the user's computer receives data only via the server's program, to which the user's computer logs on. Hence, there is no reason in Gerace for its server program 31 to generate IDs for identifications of web page frames displayed to the user via the user's computer.

On this point, the examiner argues that Gerace discloses generating web site frame having a predetermined signature, citing Gerace column 4 line 56 to column 5 line 25. The examiner is wrong. A frame is defined in the HTML specification, as HTML tagging embedding a second web page (stuff inside the frame) in a web page. However, Gerace column 4 line 56 to column 5 line 25 does not discuss frames. It discloses only tracking the user's selections. Moreover, it certainly does not disclose generating "*a predetermined signature*" corresponding to "*an electronic token uniquely*," as defined by claim 1. Claim 1 defines a different signature for each frame for displaying each token (coupon offer). The specification of this application explains that this identification of frames allows the originator of the coupon offer and frame, and the redeemer of the coupon offer, to be different from one another. Gerace has no such requirements since it is not directed to coupons and promotions, and in any case contains no corresponding disclosure. Therefore, the rejection of claim 1 should be reversed.

#### **D. Dependant Claims**

Gerace does not disclose "said promotion server system further includes authorization code for enabling said commercial server system to accept or decline one or more of said promotions", as recited in claim 2. Gerace is not directed to promotions.

## **XII. 37 CFR 41.37 (c)(1)(viii) Claims Appendix**

Appendix I is attached which contains a copy of the claims involved in the appeal.

**XIII. 37 CFR 41.37 (c)(1)(ix) Evidence Appendix**

Appendix II is attached which notes there is no evidence submitted herewith under 37 CFR 41.37 (c)(1)(ix).

**XIV. 37 CFR 41.37 (c)(1)(x) Related Proceedings Appendix**

Appendix III is attached which notes there are no related proceedings.

**XV. 37 CFR 41.37 (c)(2)**

The applicant has not submitted any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence.

**XVI. 37 CFR 41.37 (d)**

This appeal brief complies with all the requirements of paragraph (c) of this section.

**XVII. 37 CFR 41.37 (e)**

The filing of this appeal brief is timely.

Respectfully Submitted,

11/13/2006

/Richard Neifeld#35,299/

DATE

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BTM/ran

Printed: November 13, 2006 (4:42pm)

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## **Appendix I**

1. A system for managing promotions over a network comprising:

a promotion server system including a computer processor and associated datastore, said datastore containing data representative of terms and statistics of one or more item promotions and electronic tokens;

a commercial server system including a computer processor and associated commercial datastore, said commercial datastore containing data representative of terms and statistics of one or more item promotions and electronic tokens, said commercial server system being selectively coupleable to said promotion server system over said network; and

a client server system including a computer processor and associated client datastore, said client datastore containing data representative of terms and statistics of one or more item promotions and electronic tokens, said client server system being selectively coupleable over said network to (1) said promotion server system and to (2) said commercial server system;

wherein said commercial server system further includes a script for generating a website frame having a predetermined signature, such that an electronic token uniquely corresponds to said predetermined signature;

wherein said commercial server system distributes said website frame over said network to said promotion server system;

wherein said client server system connects to said promotion server system over said network;

wherein said promotion server system transmits said electronic token from said website frame over said network to said client server system; and

wherein said promotion server system transmits over said network to said commercial server system coupon information associated with the client received from said electronic token.

2. The system of claim 1, wherein said promotion server system further includes authorization code for enabling said commercial server system to accept or decline one or more of said promotions.

3. The system of claim 1, wherein said promotion server system further includes accounting code for providing, to said commercial server system, said statistics of said promotions, said statistics including data representative of one or more of the number of promotions redeemed and the value of the redeemed promotions.

11. The system of claim 1, wherein said promotion data is transferred to said commercial server system in the form of screen display data.

28. A system for managing promotions over a network comprising:  
an promotion server;  
a retailer's commercial server;  
a consumer's client computer;  
wherein said advertiser's promotion server; said retailer's commercial server; and said consumer's client computer are operably connected to the Internet, and are structured and programed so that:  
said consumer's client computer can request from said retailer's commercial server a promotion; and  
said retailer's commercial server responds to requests from said consumer's client computer for said promotion by automatically obtaining from said promotion server promotion authorization data for said promotion, and said retailer's commercial server determines from said authorization data whether to accept or decline said promotion.

29. The system of claim 28 wherein said retailer's commercial server selecting a promotion accounting report option, wherein said promotion server transfer transfers screen display data to said retailer's commercial server system that provides said retailer's commercial server system with statistics that include the dollar value of promotions redeemed by said consumer's client computer.

30. A computer network implemented method for managing promotions over a network

comprising:

- providing an promotion server;
- providing a retailer's commercial server;
- providing a consumer's client computer;

wherein said advertiser's promotion server; said retailer's commercial server; and said consumer's client computer are operably connected to the Internet, and are structured and programed so that:

said consumer's client computer can request from said retailer's commercial server a promotion; and

said retailer's commercial server responds to requests from said consumer's client computer for said promotion by automatically obtaining from said promotion server promotion authorization data for said promotion, and said retailer's commercial server determines from said authorization data whether to accept or decline said promotion.

31. The method of claim 30 further comprising:

said retailer's commercial server selecting a promotion accounting report option, wherein said promotion server transfer transfers screen display data to said retailer's commercial server system that provides said retailer's commercial server system with statistics that include the dollar value of promotions redeemed by said consumer's client computer.

## **Appendix II**

There is no evidence submitted herewith under 37 CFR 41.37 (c)(1)(ix).

### **Appendix III**

There are no related proceedings.

BTM/ran

Printed: November 13, 2006 (4:42pm)

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